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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,545

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Victor R. Blake

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EXAMINER

MURDOUGH, JOSHUA A

ART UNIT

PAPER NUMBER

3621

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/606,545	<b>Applicant(s)</b> BLAKE ET AL.	
	<b>Examiner</b> JOSHUA MURDOUGH	<b>Art Unit</b> 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-10,12,13,15-17,37-40,42-44,46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-10,12,13,15-17,37-40,42-44,46 and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination (“RCE”) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 31 March 2009 has been entered.

### ***Acknowledgements***

2. This action is responsive to Applicants' above noted RCE and associated amendments received 31 March 2009.
3. This action has been assigned paper number 20090615 for reference purposes only.
4. Claims 1-2, 4, 6-10, 12-13, 15-17, 37-40, 42-44, and 46-47 are pending and have been examined.

### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. §1.75(d)(1), MPEP § 2181 and its discussion of C.F.R. §1.75(d)(1), and MPEP § 608.01(o). Correction of the following is required:

- a. “means for storing data that specifies a number of paid permitted connections” in at least claim 12;

- b. “means for load balancing according to said number of paid permitted connections” in at least claim 12;
  - c. "means for tracking information associated with paid permitted connections to the network resource” in at least claim 16;
  - d. “means for providing access to the tracked information" in at least claim 16; and
  - e. “means for warning if a threshold limit, of a number of paid permitted connections less than a maximum limit of paid permitted connections, is reached" in at least claim 17.
6. These objections are not to be confused with rejections under 35 U.S.C. 112 1<sup>st</sup> paragraph for new matter. The authority for these objections comes from the rules as noted in MPEP § 608.01(o): “Note that examiners should ensure that the terms and phrases used in claims presented late in prosecution of the application (including claims amended via an examiner’s amendment) find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description, see 37 CFR 1.75(d)(1).” Applicant should (1) amend their specification to include the above phrases OR (2) amend the claims so the phrases correspond to the ones used in the specification. Either way, Applicant is reminded that no new matter may be added.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 12, 13, and 15-17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. The following claim elements are a means plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structures, materials, or acts to the claimed functions such that one of ordinary skill in the art would recognize what structures, materials, or acts perform the claimed functions. These elements are:

- f. “means for storing data that specifies a number of paid permitted connections” in at least claim 12;
- g. “means for load balancing according to said number of paid permitted connections” in at least claim 12;
- h. "means for tracking information associated with paid permitted connections to the network resource” in at least claim 16;
- i. “means for providing access to the tracked information" in at least claim 16; and
- j. “means for warning if a threshold limit, of a number of paid permitted connections less than a maximum limit of paid permitted connections, is reached" in at least claim 17.

10. Applicant is required to:

(a) Amend the claims so that the claim limitations will no longer be means plus function limitations under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structures, materials, or acts to the claimed functions without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record where the corresponding structures, materials, or acts are set forth in the written description of the specification that perform the claimed functions. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 7, 8, 10, 12, 13, 16, 37, 38, 40, 42, and 44 are rejected under 35 U.S.C. §102(b) as being anticipated by Freeman (US 2001/0049717).

3. Claims 1, 2, 7, 8, 10, 12, 13, 16, 37, 38, 40, 42, and 44 rejected under 35 U.S.C. 103(a) as being unpatentable over Freeman (US 2001/0049717) in view of Cullen (US 2003/0105800).

4. As to claims 1, 12, 13, 37, and 42, Freeman shows:

a. A method, comprising:

b. receiving a request to access a network resource **510** accessible through each of a plurality of servers (Figure 1), wherein licenses to access said network resource (“connection licenses,” [0366]) are distributed to each respective said servers **180** and

wherein a total of said licenses distributed to said servers corresponds to a maximum limit of allowed licensed connections to said network resource (“control the number of user connections allowed,” [0366]);

c. determining whether granting the requested access to the network resource provides a number of licensed connections equal to or less than said maximum limit (“control the number of user connections,” Id.);

d. granting the requested access to the network resource if it is determined that the granting of the requested access provides said number of licensed connections equal to or less than said maximum limit (“control the number of user connections allowed,” [0366]); and

e. using load balancing to direct said granted requested access to one of said servers having at least one of its said respective licenses available for said requested access [0348+].

5. Freeman does not expressly show load balancing according to license availability.

6. However, Cullen teaches load balancing according to software application availability [0036]. The software application is tied to the license to determine use (Id.). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teaching of Freeman to alter the load balancing to be based upon license availability. Load balancing based on the software availability would allow for more effective use of the granted licenses and potentially reduce the number of licenses needed because the balancing would find available licenses so they can be used.

7. As to claim 2, Freeman further shows:  
  
said network resource includes an application available from each of said servers [0350].
8. As to claim 7, Freeman further shows:  
  
keeping at least one of a local log or syslog to track information associated with licensed connections to the network resource [0362].
9. As to claims 8, 16, 40, and 44; Freeman further shows:  
  
comprising providing third-party (administration) access to at least one of the local log or syslog to allow licenses associated with the tracked information stored therein to be remotely managed or monitored [0362].
10. As to claim 10, Freeman further shows:  
  
associated maximum limits of allowed licensed connections, of a plurality of network resources, are arranged according to a parent/child arrangement [0170] ("ParentID;" if there is a parent, there is also a child.).
11. As to claim 38, Freeman further shows:  
  
said network device is a switch **204** adapted to direct said requested access to said one of said servers **180**, which are communicatively coupled to said switch (Figure 2A).
12. Claims 4, 6, 15, 39, and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Freeman and Cullen in view of Bullard (US 6,405,251).



13. As to claims 4, 6, 15, 39, and 43, Freeman and Cullen disclose as discussed above in regards to claims 1, 12, 37, and 42.

14. Freeman and Cullen do not expressly disclose:

f. said servers include mail servers and wherein said licenses distributed to said servers include licenses allocated to a plurality of said mail servers based on usernames assigned to said mail servers; or

g. said servers include mail servers and wherein said licenses distributed to said servers include license allocated to said mail servers based on geographic information associated with users that request access to the network resource.

15. However, Bullard teaches:

h. said servers include mail servers (Column 5, lines 52-53) and wherein said licenses distributed to said servers include licenses allocated to a plurality of said mail servers based on usernames assigned to said mail servers (Column 21, lines 13-15); and

i. said servers include mail servers (Column 5, lines 52-53) and wherein said licenses distributed to said servers include license allocated to said mail servers based on geographic information associated with users that request access to the network resource (Column 14, lines 47-52).

16. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Freeman to make the servers mail servers with the usernames and geographic information as described by Bullard. This would allow for better arrangements of the servers due to the increased information about the servers, resulting in more

efficient communications as this information indicates potential communications delays due to distance and hops.

17. Claims 9, 17, 46, and 47 are rejected under 35 U.S.C. §103(a) as being unpatentable over Freeman and Cullen in view of Eggleston (US 5,764,899).

18. As to claims 9, 17, 46, and 47, Freeman and Cullen disclose as discussed above regarding claims 1, 12 and 42.

19. Freeman and Cullen do not expressly show providing a warning message if said maximum limit of licensed connections is reached or approached.

20. However, Eggleston teaches providing a warning message if said maximum limit of licensed connections is reached (Column 3, lines 57-65) or approached (Column 4, lines 1-3).

21. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the teachings of Freeman to include a warning as the number of connections approaches the limit, in order to, allow better monitoring of traffic and to give more advanced warning that the licensed number of connections may need to be increased.

### ***Response to Arguments***

22. Applicant's arguments with respect to claims 1-2, 4, 6-10, 12-13, 15-17, 37-40, 42-44, and 46-47 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The Examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

12. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua Murdough  
Examiner, Art Unit 3621

/Calvin L Hewitt II/  
Supervisory Patent Examiner, Art Unit 3685